

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF CORRECTIONS and
OFFICE OF STATE EMPLOYER,

UNPUBLISHED
June 27, 2006

Plaintiffs-Appellees,

v

No. 268279
Ingham Circuit Court
LC No. 05-001297-CL

MICHIGAN AFSCME COUNCIL 25,

Defendant-Appellant.

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant (hereinafter the union) claims an appeal from the circuit court's order granting plaintiffs' motion for summary disposition and vacating an arbitrator's decision restoring Edward Walker to his employment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Walker worked for plaintiff Department of Corrections (DOC), and was subject to random alcohol and drug testing. Walker tested positive for marijuana, and was suspended for violating DOC Work Rules 5 (Conduct Unbecoming a Department Employee) and 18 (Use of Alcohol or Controlled Substances). The warden held a disciplinary conference, and thereafter recommended that Walker be discharged for violating Work Rules 5 and 18. The Bureau of Human Resources (BHR) accepted the recommendation, and Walker was discharged.

The parties' collective bargaining agreement (CBA) provided for a grievance procedure, the final step of which was arbitration. The CBA provided that an arbitrator had the authority to "determine compliance with the provisions" of the CBA, but had no "authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and Civil Service Rules and Regulations."

The union filed a grievance regarding Walker's termination, which was denied, and the matter proceeded to arbitration. The arbitrator ordered that Walker be reinstated to his employment. The arbitrator rejected the DOC's argument that Work Rule 18 required the warden to recommend that Walker be discharged. The arbitrator noted that the CBA and Civil Service Rule 2-7 stated that the penalty for a drug offense may range "up to and including dismissal," while Work Rule 18 required dismissal for such an offense. However, the DOC's Policy Directive 02.03.100 established a procedure for providing for a discipline

recommendation from the management representative (here, the warden) to the BHR Administrator based on a chart known as the Grid and on aggravating and mitigating circumstances. The arbitrator concluded that if the warden had followed this procedure, the BHR Administrator would have had mitigating factors to consider, including that the warden would not have recommended discharge, Walker was a sixteen-year employee with a spotless record, Walker used only marijuana, and not a harder substance, the test Walker underwent was random, and Walker showed significant remorse. The arbitrator concluded that the DOC did not exercise discretion in this case as the CBA and other policies required, and thus violated the just cause standard for discharge of an employee. The arbitrator reinstated Walker to his employment without back pay but without loss of seniority and pursuant to the terms of a last chance agreement to be negotiated by the parties.

Plaintiffs filed a petition to vacate the arbitration award in circuit court and moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the arbitrator exceeded the authority granted to him by the CBA by modifying the discipline required for a violation of Work Rule 18. The union also moved for summary disposition pursuant to MCR 2.116(C)(10). The circuit court granted plaintiffs' motion and denied the union's motion, finding that by ignoring the plain language of Work Rule 18, the arbitrator impermissibly modified the authority granted to him under the CBA. The circuit court vacated the arbitration award.

We review a circuit court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, when considering the enforcement of an arbitration award, our review is circumscribed. Labor arbitration is a product of contract. An arbitrator's authority to resolve a dispute arising out of the interpretation of a CBA is derived exclusively from the contract. A court cannot review factual findings or the merits of the decision. A court may only decide whether the arbitrator's decision draws its essence from the contract. If the arbitrator did not disregard the scope of his authority as expressed in the contract, judicial review ceases. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118-119; 607 NW2d 742 (1999).

An arbitrator's authority to resolve a dispute regarding the interpretation of the CBA is derived exclusively from the terms of the CBA. *Lenawee Co Sheriff, supra* at 118. It was undisputed that Walker tested positive for marijuana while on duty, and that the CBA provided that a positive drug test gave the DOC just cause to impose discipline. The arbitrator found that the DOC lacked just cause to discharge Walker because it failed to exercise discretion as the CBA and Civil Service Rule 2-7 authorized it to do. The arbitrator seemed to conclude that had the DOC exercised its discretion, it would have been required to impose a lesser sanction. This finding contradicts the plain language of the authorities under which the DOC acted. The CBA and Civil Service Rule 2-7 permitted the DOC to discharge Walker for testing positive for marijuana, and Work Rule 18 required that the DOC do so. No authority under which the DOC acted required it to impose a lesser sanction, even after considering mitigating circumstances, as the DOC did at the disciplinary conference. The arbitrator simply concluded that under the circumstances, the sanction of discharge was too harsh. However, an arbitrator is confined to interpretation and application of the CBA. He is not authorized to administer his own brand of industrial justice. *Id.* at 119. The DOC was within its authority to discharge Walker given the undisputed fact that Walker tested positive for marijuana while on duty. The circuit court

correctly determined that the arbitrator exceeded the authority granted to him by the CBA. The circuit court did not err by vacating the arbitrator's decision. *Id.* at 118-119.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette